

AMENDED IN ASSEMBLY APRIL 5, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 1433

Introduced by Assembly Member Emmerson

February 22, 2005

An act to amend Section ~~65580~~ 5922 of the Government Code, relating to ~~housing~~ *public finance*.

LEGISLATIVE COUNSEL'S DIGEST

AB 1433, as amended, Emmerson. ~~Housing: affordability and availability~~ *Public finance contracts*.

Existing law generally sets forth the authority and duties of state and local government in entering into contracts related to the issuance or carrying of bonds or the acquisition or carrying of an investment or program of investment.

This bill would additionally specify that failure to comply with any law, ordinance, rule, regulation, guideline, or other requirement of the state or of any local government, pertaining to specified aspects of a project financed in whole or in part with bonds, shall not impair the validity or enforceability of the bonds.

~~Existing law encourages local and state governments to use their powers to facilitate the improvement and development of affordable housing for all economic segments of the community in an effort to expand housing opportunities and accommodate the housing needs of Californians at all economic levels.~~

~~This bill would make a nonsubstantive change to these provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 65580 of the Government Code is~~
2 ~~amended to read:~~

3 *SECTION 1. Section 5922 of the Government Code is*
4 *amended to read:*

5 5922. Notwithstanding any other provision of law, all of the
6 following apply:

7 (a) (1) In connection with, or incidental to, the issuance or
8 carrying of bonds, or acquisition or carrying of any investment or
9 program of investment, any state or local government may enter
10 into any contracts ~~which~~ *that* the state or local government
11 determines to be necessary or appropriate to place the obligation
12 or investment of the state or local government, as represented by
13 the bonds, investment or program of investment and the contract
14 or contracts, in whole or in part, on the interest rate, currency,
15 cash-flow, or other basis desired by the state or local
16 government, including, ~~without limitation~~ *but not limited to*,
17 contracts commonly known as interest rate swap agreements,
18 currency swap agreements, forward payment conversion
19 agreements, futures, or contracts providing for payments based
20 on levels of, or changes in, interest rates, currency exchange
21 rates, stock or other indices, or contracts to exchange cash flows
22 or a series of payments, or contracts, including, ~~without~~
23 ~~limitation~~ *but not limited to*, interest rate floors or caps, options,
24 puts or calls to hedge payment, currency, rate, spread, or similar
25 exposure. These contracts or arrangements may also be entered
26 into by state or local governments in connection with, or
27 incidental to, entering into or maintaining any agreement ~~which~~
28 *that* secures bonds, including bonds issued by private entities.
29 These contracts and arrangements shall be entered into with the
30 parties, selected by the means, and contain the payment, security,
31 default, remedy, and other terms and conditions, determined by
32 the state or local government, after giving due consideration for
33 the creditworthiness of the counterparties, where applicable,
34 including any rating by a nationally recognized rating agency or
35 any other criteria as may be appropriate.

36 ~~No~~

37 (2) *No* local government shall enter into any of the contracts or
38 arrangements pursuant to this subdivision, unless its governing

body first determines that the contract or arrangement or program of contracts is designed to reduce the amount or duration of payment, currency, rate, spread, or similar risk or result in a lower cost of borrowing when used in combination with the issuance of bonds or enhance the relationship between risk and return with respect to the investment or program of investment in connection with, or incident to, the contract or arrangement ~~which~~ *that* is to be entered into.

(b) Bonds issued by a state or local government may be payable in accordance with their terms, in whole or in part, in currency other than lawful money of the United States—~~of America~~, provided that the state or local government enter into a currency swap or similar agreement for payments in lawful money of the United States—~~of America~~, which covers the entire amount of the debt service payment obligation of the state or local government with respect to the bonds payable in other currency, and provided further that if the term of that agreement is less than the term of the bonds, the state or local government shall covenant to enter into additional agreements as ~~may be~~ necessary to cover the entire amount of the debt service payment obligation. An issuer shall include in its written notice to the California Debt *and Investment* Advisory Commission pursuant to subdivision (g) of Section 8855 a statement of its intent to issue bonds payable in a currency other than lawful money of the United States—~~of America~~.

(c) In connection with, or incidental to, the issuance or carrying of bonds, or entering into any of the contracts or arrangements referred to in subdivision (a), the state or local government may enter into credit enhancement or liquidity agreements, with payment, interest rate, currency, security, default, remedy, and other terms and conditions as the state or local government determines.

(d) Proceeds of bonds and any moneys set aside and pledged to secure payment of the bonds or any of the contracts entered into pursuant to this section, may be invested in securities or obligations described in the ordinance, resolution, indenture, agreement, or other instrument providing for the issuance of the bonds or the contract and may be pledged to and used to service any of the contracts or agreements entered into pursuant to this section.

1 (e) Failure to comply with any law, ordinance, rule,
2 regulation, guideline, or other requirement of the state or of any
3 local government, pertaining to the approval, authorization,
4 design, acquisition, or construction of a project financed in
5 whole or in part with bonds, shall not impair the validity or
6 enforceability of the bonds. However, nothing in this subdivision
7 shall exempt the project from any requirement of law or any
8 ordinance, rule, regulation, guideline, or other requirement
9 otherwise applicable to the project to the same extent as if the
10 project was financed other than with bonds.

11 ~~65580. The Legislature finds and declares as follows:~~

12 ~~(a) The availability of housing is of vital statewide importance.~~
13 ~~The early attainment of decent housing and a suitable living~~
14 ~~environment for every Californian, including farmworkers, is a~~
15 ~~priority of the highest order.~~

16 ~~(b) The early attainment of this goal requires the cooperative~~
17 ~~participation of government and the private sector in an effort to~~
18 ~~expand housing opportunities and accommodate the housing~~
19 ~~needs of Californians of all economic levels.~~

20 ~~(c) The provision of housing affordable to low- and~~
21 ~~moderate-income households requires the cooperation of all~~
22 ~~levels of government.~~

23 ~~(d) Local and state governments have a responsibility to use~~
24 ~~the powers vested in them to facilitate the improvement and~~
25 ~~development of housing to make adequate provision for the~~
26 ~~housing needs of all economic segments of the community.~~

27 ~~(e) The Legislature recognizes that in carrying out this~~
28 ~~responsibility, each local government has the responsibility to~~
29 ~~consider economic, environmental, and fiscal factors and~~
30 ~~community goals set forth in the general plan and to cooperate~~
31 ~~with other local governments and the state in addressing regional~~
32 ~~housing needs.~~